



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

*Street address:* 629 East Main Street, Richmond, Virginia 23219

*Mailing address:* P.O. Box 10009, Richmond, Virginia 23240

Fax (804) 698-4500 TDD (804) 698-4021

[www.deq.virginia.gov](http://www.deq.virginia.gov)

L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

(804) 698-4000  
1-800-592-5482

July 7, 2006

Mr. M. Fred Strauss  
Environmental Program Manager  
Central Virginia Water Storage Corp.  
1044 North 115<sup>th</sup> Street, Suite 400  
Omaha, Nebraska 68154

Re: Extension of Virginia Water Protection Permit No. 01-1849

Dear Mr. Strauss:

This is in response to your letter of May 15, 2006 regarding your request to extend the expiration date of Virginia Water Protection Permit No. 01-1849 authorizing the water storage reservoir for Central Virginia Water Storage Corp. The permit has an expiration date of May 31, 1997 and by statute and regulation may be extended for up to ten years for a total permit term of fifteen years. As provided for by 9 VAC 25-210-185 such as extension may be granted following a written request provided that there has been no change in the permitted activity.

Enclosed please find an amended cover page with the new expiration date. Special Condition A. 4 was also amended by deleting the reference to the permit expiring in five years and deleting the language regarding possible extension to 15 years, which becomes moot. Please substitute these two pages for the first two pages in your original permit.

Regarding the need for continuing the permit for operation of the reservoir, we do not concur with your position that this permit is not needed once the reservoir is constructed. The permit was issued for "The construction and operation of a reservoir" (see the cover page under activity description). Furthermore, the permit contains daily water withdrawal limits and conditions regarding reporting on an annual basis. However, per my conversation with Tim Hayes, we will get a legal opinion on the need to continue the permit beyond construction, and get back with you at a later date.

Mr. M. Fred Stauss  
July 7, 2006  
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If you have any questions regarding this action, please call Joe Hassell at (804) 698-4072.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ellen Gilinsky".

Ellen Gilinsky, Ph.D.  
Director, Division of Water Quality

Cc: Tim Hayes, Esq.

Enclosures



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VWP Individual Permit Number 01-1849

Effective Date: May 31, 2002

Expiration Date: May 31, 2017

### VIRGINIA WATER PROTECTION PERMIT ISSUED PURSUANT TO THE STATE WATER CONTROL LAW AND SECTION 401 OF THE CLEAN WATER ACT

Based upon an examination of the information submitted by the owner and in compliance with § 401 of the Clean Water Act as amended (33 USC 1251 et seq.) and the State Water Control Law and regulations adopted pursuant thereto, the State Water Control Board (board) has determined that there is a reasonable assurance that the activity authorized by this permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment to state waters or fish and wildlife resources.

**Permittee:** Central Virginia Water Storage Corp.

**Address:** 1044 N. 115<sup>th</sup> St., Suite 400, Omaha, NE 68154-4446

**Activity Location:** At the Tenaska Virginia II, L.P. property along the James River just east of Route 15 in Buckingham County.

**Activity Description:** The construction and operation of a reservoir on an unnamed tributary of the James River, the construction of an outfall structure on the James River and the construction of stream crossings for effluent and water supply lines across unnamed tributaries of the James River at the Tenaska Virginia II Partners site in Buckingham County, Virginia.

The permitted activity shall be in accordance with this Permit Cover Page, Part I - Special Conditions and Part II - General Conditions.

*Ellen Kinsley*  
\_\_\_\_\_  
Director, Division of Water Quality

*July 7, 2006*  
\_\_\_\_\_  
Date

## **Part I – Special Conditions**

### **A. Authorized Activities**

1. This permit authorizes the construction of a reservoir on an unnamed tributary of the James River, the construction of an outfall structure on the James River and the construction of stream crossings for effluent and water supply lines across unnamed tributaries of the James River at the Tenaska Virginia II Partners site in Buckingham County, Virginia as indicated in the Joint Permit Application (and additional DEQ approved submittals) dated October 10, 2001, received on October 19, 2001, and deemed complete on April 8, 2002. The permit authorizes permanent impacts of not more than 0.363 acres to wetlands and not more than 141 linear feet and 0.012 acres of permanent impacts to waters excluding wetlands. The permit authorizes temporary impacts of not more than 0.286 acres of wetlands and temporary impacts of 0.103 acres and 280.66 linear feet to waters excluding wetlands.
2. The project activities, including any conditions and limitations, shall be adhered to as described in the Joint Permit Application and any supplemental materials approved by DEQ.
3. The permittee shall notify the DEQ, Office of Water Permits of any additional impacts to surface waters, including wetlands, associated with this project. Any additional impacts to surface waters, including wetlands, shall be subject to individual permit review or modification of this permit, and compensation may be required.
4. This permit is valid for fifteen years from the date of issuance. Reissuance of the permit may be necessary if any portion of the authorized activities or any permit requirement (including compensation provisions) has not been completed. The original permit term cannot exceed the maximum of 15 years.
5. This permit may be reopened to provide a minimum flow to the unnamed tributary below the impoundment if the construction of the impoundment reduces stream flow to the point that water use for livestock in the downstream pasture is adversely effected.

### **B. Standard Project Conditions**

1. The activities authorized by this permit shall be executed in a manner to minimize any adverse impact on stream beneficial uses, as defined in § 62.1-10(b) of the Code.
2. No activity shall substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water. Culverts placed in streams shall be

installed to maintain low flow conditions. No activity may cause more than minimal adverse effect on navigation. The activity shall not impede the passage of normal or expected high flows and the structure or discharge shall withstand expected high flows. Flows downstream of the project area shall be maintained to protect all uses.

3. The permittee shall conduct construction activities in the James River only between July 1<sup>st</sup> and October 31<sup>st</sup>.
4. All excavation, dredging, and/or filling in surface waters shall be accomplished in a manner that minimizes stream bottom disturbances and turbidity increases.
5. Virginia Water Quality Standards shall not be violated in any surface water as a result of the project activities.
6. Temporary disturbances to wetlands during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be stabilized within 30 days of completing work, restored to pre-construction conditions, and planted or seeded with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall take all appropriate measures to promote revegetation of temporarily disturbed wetland areas with wetland vegetation by the second year post-disturbance. All temporary fills shall be removed in their entirety and the affected area returned to pre-existing contours.
7. Heavy equipment in temporarily impacted surface waters shall be placed on mats, geotextile fabric, or other suitable measures to minimize soil disturbance to the maximum extent practical. Mats shall be removed as soon as the work is complete.
8. All materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into surface waters, managed such that leachate does not enter surface waters, and entirely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to original contours, stabilized within 30 days following removal of the stockpile, and restored to the original vegetated state.
9. All non-impacted surface waters within the project or right-of-way limits that are within fifty feet of any project activities shall be clearly flagged or demarcated for the life of the construction activity within that area. The permittee shall notify all contractors and subcontractors that these marked areas are surface waters where no activities are to occur.
10. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be

placed prior to clearing and grading and maintained in good working order to minimize impacts to surface waters. These controls shall remain in place until the area stabilizes.

11. Any exposed slopes or streambanks shall be stabilized immediately upon completion of work in each impact area in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
12. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, French drains, or other similar structures.
13. The permittee shall employ measures to prevent spills of fuels, lubricants, or other pollutants into surface waters.
14. All construction, construction access (for example, cofferdams, sheetpiling, and causeways) and demolition activities associated with this project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this permit.
15. Untreated stormwater runoff shall be prohibited from directly discharging into any surface waters. In accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, appropriate best management practices (BMP) shall be deemed suitable treatment prior to discharge into surface waters.
16. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.
17. Wet or uncured concrete shall be prohibited from entry into surface waters.
18. No machinery may enter surface waters, unless authorized by this permit.
19. In issuing this permit, DEQ has not taken into consideration the structural stability of any proposed structure.

**C. Photographic Monitoring**

1. A photo station to document construction activities shall be established at the reservoir and at the outfall site authorized by this permit. The photograph orientation at each station shall remain constant during all monitoring events. The photographs shall document site activities and conditions, which may include installation and maintenance of erosion and sediment controls; flagged non-impact surface waters; construction access and staging areas; filling, excavation, and dredging activities; culvert installation; dredge disposal; and site stabilization, grading, and associated restoration activities.

Photographs shall be taken prior to site activities, at the end of each month, and within one week of construction completion. Each photograph shall be labeled to include the following information: permit number, impact area and photo station number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

2. A photo station to document instream flow conditions below the reservoir shall be established within 100 feet downstream of the dam facing upstream. Photos will be taken once a week for a period of six consecutive weeks each year. The first photo of the year shall not take place before September 1st and the last photo of the year shall not take place after October 15<sup>th</sup>. Photos will be taken on the same day of the week. Photos will be angled and focused to indicate whether there is any water flow in the channel below the dam. The photographic monitoring will occur every year for five years after completion of the dam.

**D. Required Notifications and Submittals**

1. All written communications required by this permit shall be submitted to the DEQ Office of Water Permits, Virginia Water Protection Permit Program, P.O. Box 10009, Richmond, Virginia 23240-0009. The permit number shall be included on all correspondence.
2. All reports required by this permit and other information requested by DEQ shall be signed by the applicant or a person acting in the applicant's behalf, with the authority to bind the applicant. A person is a duly authorized representative only if:
  - a. The authorization is made in writing by a person described above; and
  - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position.
  - c. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization shall be submitted to DEQ prior to or together with any separate information, or applications to be signed by an authorized representative.
3. All submittals required by this permit shall contain the following signed certification statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that

qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation.

4. Any fish kills or spills of fuels or oils shall be reported immediately upon discovery. If spills or fish kills occur between the hours of 8:15 AM to 5:00 PM Monday through Friday, DEQ shall be notified at South Central Regional Office (434) 582-5120; otherwise, the Department of Emergency Services shall be notified at 1-800-468-8892.
5. Violations of Virginia Water Quality Standards shall be reported within 24 hours to DEQ at the South Central Regional Office (434) 582-5120.
6. DEQ shall be notified in writing when potential environmentally threatening conditions are encountered which require debris removal or involve potentially toxic substances. Measures to remove the obstruction, material, or toxic substance or to change the location of any structure are prohibited until approved by DEQ.
7. DEQ shall be notified in writing at least ten days prior to the initiation of construction activities authorized under this permit so that inspections of the project can be planned, if deemed necessary. The notification shall include identification of the impact areas at which work will occur and a projected schedule for completing work at each permitted impact area.
8. Construction photographic monitoring reports required by special condition C.1. shall be submitted to DEQ within 30 days of each monitoring event. The reports shall include, as appropriate, the following:
  - a. A written narrative stating whether work was performed, a description of the work performed at each impact area, when the work was initiated, and expected date of completion; a summary of activities conducted to comply with the permit conditions; a summary of permit non-compliance events or problems encountered, subsequent notifications, and corrective actions; a summary of anticipated work to be completed during the next reporting period; and an estimated date of project completion.
  - b. A labeled site map depicting all impact areas and photo stations.
  - c. Properly labeled photographs as described in Part I Section C.



9. Instream flow photographic monitoring reports required by special condition C.2. shall be submitted to DEQ within 30 days of the date the last photograph is taken for each year. The reports shall include an estimate of the amount of rainfall received in the week previous to when the photograph was taken. The photographs shall be labeled as described in Section C.
10. DEQ shall be notified in writing within 30 days following the completion of all activities in permitted impact areas authorized under this permit.
11. Documentation that the USACE has debited the required mitigation credits from the mitigation bank ledger shall be submitted to DEQ- Office of Water Permits Virginia Water Protection Permit Program, P.O. Box 10009 Richmond, Virginia 23240 prior to the onset of project construction. All work shall cease if this documentation has not been submitted by the permittee.

**E. Utilities**

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance in each area, and each area shall be returned to its original contours and stabilized within 30 days of completing work in said area, unless otherwise authorized by this permit.
2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.
3. The trench for a utility line cannot be constructed in a manner that drains wetlands (for example, backfilling with extensive gravel layers creating a French drain effect).

**F. Stream Modification and Streambank Protection**

1. Redistribution of existing stream substrate for erosion control purposes is prohibited.
2. All material removed from the stream substrate shall not be disposed of in surface waters.
3. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
4. Riprap apron for all outfalls shall be designed in accordance with Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

5. For streambank protection activities, structures and backfill shall be placed as close to the streambank as practical. No material shall be placed in excess of the minimum necessary for erosion protection.
6. All streambank protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practical.
7. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

**G. Pond Construction and Oeration**

1. The outfall and overflow structure shall be constructed and maintained to prevent downstream sediment deposition, erosion, or scour that may be associated with normal flow and any expected storm flows. Construction shall include the use of an appropriately sized riprap outlet protection apron at the outfall site.
2. Draining of a pond shall be performed by a method that prevents downstream sediment deposition, erosion, or scour.

**H. Compensation**

1. The permittee shall compensate for the permanent impacts of not more than 0.363 acres to wetlands and not more than more that 141 linear feet and 0.012 acres of permanent impacts to waters excluding wetlands by debiting available credits at the James River Wetlands Bank, LLC. Impacts will be compensated at ratios of 2:1 for permanent impacts, for a total of 0.75 credits.
2. Restoration and stabilization of all stream banks will be accomplished through the establishment of woody vegetation by sprigging with plants that are native to the area.

**I. Water Withdrawals**

1. If total ground water and surface water withdrawals exceed 10,000 gallons per day on average in any month, the permittee shall report the withdrawals to DEQ by January 31 of the next year as required under State Water Control Board (SWCB) Water Withdrawal Reporting Regulation (9 VAC 25-200-10).
2. The maximum daily withdrawal from the reservoir shall not exceed 16.65 million gallons.

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3. Each day that a water withdrawal occurs, the permittee shall record the date and the amount of water withdrawn on that date. The permittee shall submit an annual report containing this information by January 31 of each year for the previous calendar year.

## **Part II – General Conditions**

### **A. Duty to Comply**

The permittee shall comply with all conditions of the VWP permit. Nothing in this permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and prohibitions. Any VWP permit violation is a violation of the law, and is grounds for enforcement action, VWP permit termination, revocation, modification, or denial of an application for a VWP permit extension or reissuance.

### **B. Duty to Cease or Confine Activity**

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

### **C. Duty to Mitigate**

The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the permit which may have a reasonable likelihood of adversely affecting human health or the environment.

### **D. VWP Permit Action**

1. A VWP permit may be modified, revoked and reissued, or terminated as set forth in 9 VAC 25-210 et seq.
2. If a permittee files a request for VWP permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the VWP permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VWP permit. If the permittee wishes to continue an activity regulated by the VWP permit after the expiration date of the VWP permit, the permittee must apply for and obtain a new VWP permit or comply with the provisions of 9 VAC 25-210-185.
3. VWP permits may be modified, revoked and reissued or terminated upon the request of the permittee or other person at the board's discretion, or upon board initiative to reflect the requirements of any changes in the statutes or regulations, or as a result of VWP permit noncompliance as indicated in subsection A above, or for other reasons listed in 9 VAC 25-210-180.

### **E. Inspection and Entry**

Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

1. Enter upon any permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP permit conditions;
2. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP permit, and
3. Sample or monitor any substance, parameter or activity for the purpose of ensuring compliance with the conditions of the VWP permit or as otherwise authorized by law.

**F. Duty to Provide Information**

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking, reissuing or terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.
2. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.

**G. Monitoring and Records Requirements**

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.
2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.
4. Records of monitoring information shall include:
  - a. The date, exact place and time of sampling or measurements;
  - b. The name of the individuals who performed the sampling or measurements;
  - c. The date and time the analyses were performed;

- d. The name of the individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used;
- f. The results of such analyses; and
- g. Chain of custody documentation.

**H. Reopener**

This permit may be reopened to modify conditions to meet new regulatory standards duly adopted by the board. Cause for reopening a permit includes, but is not limited to when the circumstances on which the permit was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change, since the time the permit was issued and thereby constitute cause for permit modification or revocation and re-issuance.

**I. Compliance with State and Federal Law**

Compliance with this permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

**J. Property rights**

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize injury to private property or any invasion of personal rights or any infringement of federal, state or local law or regulation.

**K. Transferability**

Except as provided for under automatic transfer, a permit shall be transferred only if the permit has been modified to reflect the transfer or has been revoked and reissued to the new permittee. A permit shall be automatically transferred to a new permittee if:

1. The current permittee notifies the board within 30 days of the proposed transfer of the title to the facility or property;
2. The notice to the board includes a written agreement between the existing and proposed permittee containing a specific date of transfer of permit responsibility, coverage and liability to the new permittee, or that the existing permittee will retain such responsibility,

coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and

3. The board does not within the 30-day time period notify the existing permittee and the new permittee of its intent to modify or revoke and reissue the VWP permit.

**L. Civil and criminal liability**

Nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

**M. Unauthorized discharge of pollutants**

Except in compliance with this permit, it shall be unlawful for the permittee to dredge, fill or discharge any pollutant into, or adjacent to surface waters, or otherwise alter the physical, chemical or biological properties of surface waters, excavate in wetlands, or on or after October 1, 2001, conduct the following activities in a wetland:

1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
2. Filling or dumping;
3. Permanent flooding or impounding; or
4. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

**N. Severability**

The provisions of this permit authorization are severable.

**O. VWP Permit Extension**

Any permittee with an effective VWP permit for an activity that is expected to continue after the expiration date of the VWP permit, without any change in the activity authorized by the VWP permit, shall submit written notification requesting an extension. The permittee must file the request prior to the expiration date of the VWP permit. Under no circumstances will the extension be granted for more than 15 years beyond the original effective date of the VWP permit. If the request for extension is denied, the VWP permit will still expire on its original date and, therefore, care shall be taken to allow for sufficient time for the board to evaluate the extension request and to process a full VWP permit modification, if required.